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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/535,067	03/23/2000	Ronald O. Bubar	4645/31	1606

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EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/535,067

Applicant(s)
Bubar

Examiner
Lien Tran

Art Unit
1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 19, 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12, 13, and 15-26 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12, 13, and 15-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

Art Unit: 1761

1. Claims 12-13 and 15-26 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In claims 12 and 17, a laminated crust is claimed containing the limitation of “ a plurality of margarine layers distributed between layers of the dough”. This limitation is not supported by the original disclosure because the specification does not disclose anything about a plurality of margarine layers between dough layers. Page 8 of the specification discloses that the dough sheet will have a total of 16 layers, but there is no discussion about margarine layers between dough layers. The limitation of “ a plurality of margarine layers distributed between and substantially separating said dough layers before baking” in new claim 24 is not supported by the original disclosure for the same reason set forth above. Additionally, there is no disclosure of the margarine layers substantially separating said dough layers before baking”.

de Bruijne et al disclose laminated dough comprising plurality of margarine layers distributed between layers of a proofed dough product. (See columns 3-4)

2. Claims 12-13, 15-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over de Bruijne et al in view of recipe on Cranberry Pizza and Paulucci (4842882).

de Bruijne et al disclose laminated dough comprising plurality of margarine layers distributed between layers of a proofed dough product. (See columns 3-4)

Art Unit: 1761

de Bruijne et al do not teach dough comprising a plurality of puncture openings, forming into pizza shapes, making a pizza, the amount of fat and the amount of ingredients as claimed.

The recipe teaches to make a pizza using flaky croissant dough, any pie dough or frozen puff pastry.

Paulucci teaches to make laminated pizza crust in which a plurality of docking holes are provided on the surface to prevent delamination of the crust and to allow gas and moisture to be released during the subsequent cooking process.

It would have been obvious to use the de Bruijne et al dough to make a pastry pizza as taught by the recipe to obtain a flaky taste and texture provided by the pastry dough. It would have been obvious to form holes on the dough depending on the intended use of the dough. For instance, it would have been obvious to form a plurality of puncture openings on the dough when it is used to make a pastry pizza to prevent delamination of the crust and to allow gas and moisture to be released as taught by Paulucci. The teaching of Paulucci is applicable because Paulucci also teaches to make pizza product out of pastry crust.. It would also have been obvious to form the dough into any desired shapes. The amounts of ingredients vary with the type of dough and the taste, flavor and texture desired; it would have been within the skill of one in the art to determine the appropriate amounts taking into consideration the above parameters. It would also have been obvious to vary the amount of fat depending on the fat content desired. The de Bruijne et al product also differs from the claimed product in the way in which it is made.

Art Unit: 1761


However, determination of patentability in product-by-process claims is based on the product itself. (See In re Thorpe 227 USPQ 964)

3. Applicant's arguments with respect to claims 12-13 and 15-26 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

June 26, 2003


LIEN TRAN
PRIMARY EXAMINER
Group 1702